IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3659 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAHENDRASINH NAVALSINH JADEJA

Appearance:

1. Special Civil Application No. 3659 of 1994

MR MANISH UPADHYAY for MR PRANAV G DESAI for the Petitioner

MR MUKESH H RATHOD for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 20/10/2004

ORAL JUDGEMENT

The present petition under Article 227 of the

Constitution of India has been preferred by the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") against the judgment and award dated 21st December, 1993 passed by the learned Judge, Labour Court, Rajkot (hereinafter referred to as "the Court") in Reference (LCR) No.273/1991. By impugned award the Corporation has been directed to reinstate the delinquent workman, the respondent herein (hereinafter referred to as "the workman"), in service and to pay him 50% of the backwages.

The Corporation had employed the workman as Conductor on daily wages on 24th January, 1981. On 15th August, 1983 the petitioner was on duty on Gandhidham-Bhuj route. During inspection enroute, five passengers and one student passenger were found to be travelling without the tickets. The workman had thus allowed the said six passengers a free travel. For this act of misconduct, after holding due enquiry, by order dated 5th March, 1984, the workman was dismissed from service. The said order was confirmed by order dated 27th August, 1984 made by the first appellate authority in departmental appeal. The second appeal preferred by the workman before the appellate board was dismissed on 16th August, 1985. Feeling aggrieved, in the year 1990 the petitioner raised industrial dispute, which came to be referred to the Court and registered as above. On 11th June, 1991 the workman filed statement of claim before the Court. The said claim was contested by the Corporation. The Corporation filed its written statement on 22nd January, 1992.

The Court has observed that the workman had admitted his guilt before the disciplinary authority. However, he explained that the said passengers were not issued tickets through oversight. The Court has recorded that at the relevant time there were as many as 71 passengers travelling in the bus. Though the workman had not issued tickets to the said six passengers; he had not collected the fare from the said passengers either. Thus, the workman had no ulterior motive in not issuing the tickets to the said passengers. It is observed that the act of commission/omission alleged to be misconduct was not committed by the workman with dishonest intention but the workman was negligent in discharge of his duties. The Court has also observed that earlier the workman had committed similar misconduct on seven occasions. Keeping in view the said finding recorded by the Court and the past service record of the workman, the Court set-aside the order of dismissal from service and directed the Corporation to reinstate the workman in service and to

pay him 50% of the backwages. Therefore, the present petition.

Learned advocate Mr.Upadhyay has appeared for the Corporation. He has submitted that having regard to the past conduct of the workman within a short span of service of two years, the Labour Court has erred in cancelling the order dismissing the workman from service and in directing the Corporation to reinstate the workman in service. Moreover, the workman has been rewarded by payment of 50% of the backwages. He has submitted that the Court has overlooked the delay in raising the industrial dispute. He has submitted that the order dated 5th March, 1984 dismissing the workman from service was confirmed by the appellate board on 16th August, 1985. The workman did not raise any dispute until the year 1990. After a lapse of five years the industrial dispute cannot be said to be in existence. The Court has, therefore, erred in allowing the claim made by the workman. Mr.Upadhyay has also informed the Court that pursuant to the impugned award the workman was reinstated in service on 12th February, 1994. Since his reinstatement in service the workman started committing similar acts of commission/omission of misconduct. For one such act, by order dated 18th May, 1995, the workman was ordered to be dismissed from service. The said order was confirmed by the first appellate authority. However, the appellate board in second appeal before it, set-aside the order of dismissal and directed that the workman be demoted and reinstated in service as Helper. Pursuant to the said order, by order dated 8th December, 1997, the workman has been reinstated in service as Helper. Mr.Upadhyay has submitted that thus during a very short period of service of less than five years the service of the workman was required to be terminated on three occasions. This proves that the workman is incorrigible. He, therefore, cannot be continued in service of the Corporation in any capacity. Mr.Upadhyay has relied upon the judgment of the Hon'ble Supreme Court in the matter of Devendra Swamy v/s. Karnataka State Road Transport Corporation [(2002)9 SCC 644] and of this Court in the matter of Central Bank of India v/s. Mavji C.Lakum [2002(3) GLR 2116].

Learned advocate Mr.Rathod has supported the impugned award.

In the matter of Devendra Swamy (supra), the appellant was a bus-conductor in the respondent - State Road Transport Corporation. For the act of not issuing tickets to passengers after collecting fare from them,

the appellant was dismissed from service. The Labour Court considered the dismissal to be too harsh and substituted it by the punishment of stoppage of two increments. The order of the Labour Court was set-aside by the Division Bench of the High Court in writ appeal. In the appeal before the Hon'ble Supreme Court, the Court took notice of the past history and also the conduct of the appellant since his reinstatement in service pending proceedings before the High Court. The Court observed that, "...The opinion formed by the Labour Court that punishment of dismissal imposed by the management on the workman was too harsh and undeserved, was a perverse finding and arrived at by ignoring the material as to previous acts of misconduct and punishments awarded to the appellant brought to the notice of the disciplinary authority and the Labour Court."

In the matter of Central Bank of India (supra), this Court has, following the decisions of the Hon'ble Supreme Court, held that, "...Unless and until the Labour Court or the Tribunal comes to the conclusion that considering the material produced during the inquiry, the penalty of discharge or dismissal imposed upon the delinquent, is shockingly disproportionate or that no reasonable person would have imposed such punishment on the delinquent, the order of punishment should not be disturbed. Further, that specific finding has to be arrived at by assigning cogent reasons. It cannot in cursory manner deal with this issue and substitute any lesser punishment merely by saying that the punishment of dismissal or discharge on the basis of the facts placed before it the same is not warranted for."

The Division Bench of this Court had considered the scope of interference by the industrial court/ tribunal in the matters relating to disciplinary action in the matter of Gujarat State Road Transport Corporation v/s. Prabhashanker K.Acharya [1992(2) GLH 354]. The Hon'ble Bench held that, "the Tribunal can interfere with the finding of the management in the following circumstances: (1) Want of good faith. (2) Victimisation or unfair labour practice. (3) Basic error or violation of principles of natural justice. (4) Finding completely baseless or perverse. (5) Colourable exercise of power or want of bona fide, and (6) Punishment shockingly disproportionate regard being had to the particular conduct or the past record or is such that no reasonable employer would even impose in like circumstances unless he is actuated by considerations of victimisation or unfair labour practice.....but the Tribunal cannot interfere with the finding or nature and

quantum of punishment casually or as if exercising appellate jurisdiction."

I am of the opinion that in the present case the Court has committed a grave error twofold. First; the Court has, without any reason, interfered with the finding of guilt recorded by the disciplinary authority and has termed the said act of misconduct as a mere act of negligence. There is nothing on the record to warrant such a finding. A bus-conductor who holds the position of trust and collects fare from the passengers on behalf of the Corporation, if derelicts in his duty and allows passengers to travel free of charge, the result would be loss of revenue to the Corporation. Absence of previous record of dereliction/default too would not in any way lessen the gravity of the act of misconduct. In the matter of Regional Manager, RSRTC v/s. Ghanshyam Sharma [(2002)10 SCC 330], in similar facts the Hon'ble Supreme Court has said that, "it will be misplaced sympathy to order his reinstatement instead of dismissal." Second; the Court, having noticed the past service of the workman and having noted that the workman had earlier committed similar acts of misconduct seven times, has overlooked the same by saying that they were the mistakes. To award reinstatement in service and 50% of the backwages in such a case is the abuse of the discretionary jurisdiction conferred by the Act. In my view, in doing so, the Court has also overlooked the factum of gross delay in raising the dispute by the workman. The impugned order of termination of service made on 5th March, 1984 and confirmed by the appellate board in second appeal on 16th August, 1985 came to be challenged by the workman in the statement of claim filed on 11th June, 1991. Even in a deserving case the workman could not have been paid the backwages till the date he challenged the order of termination of service.

The workman being a bus-conductor held the position of trust. By not issuing tickets to the passengers and by not recovering the fare from the passengers, the workman had committed breach of trust. Earlier, the workman had committed such acts of commission/omission seven times. Earlier he had been dismissed from service on 4th October, 1981 but, pursuant to the order of the appellate authority he was reinstated in service on 15th June, 1982. Again he was relieved from service from 8th July, 1982 to 24th December, 1982 during the monsoon. The act of misconduct in question was committed by the workman on 15th March, 1983 i.e. within three months of his reinstatement in service on 25th December, 1982. As informed by Mr.Upadhyay, after

his reinstatement in service on 12th February, 1994 pursuant to the impugned award, once again for the similar act of misconduct the workman was dismissed from service on 18th May, 1985. This time also due to indulgence granted by the appellate board in second appeal, the workman was reinstated in service and was demoted to the post of Helper. Thus, it is apparent that the workman was incorrigible and did not deserve any sympathy.

In view of the above discussion the petition is allowed with cost. The impugned judgment and award dated 21st December, 1993 is quashed and set-aside. The order of the disciplinary authority made on 5th March, 1984 is restored. Rule is made absolute.

(Ms. R.M.Doshit, J.)

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